

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BYRON WAYNE MILLER,

Defendant.

CR 24-72-BLG-SPW

ORDER


On June 11, 2024, Defendant Byron Wayne Miller filed a Motion to Dismiss Indictment (Doc. 15) based on the Ninth Circuit's recent decision in *United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024). In *Duarte*, a three-judge panel found the statute under which Defendant was charged and which prohibits convicted felons from possessing firearms, 18 U.S.C. 922(g)(1), was unconstitutional as applied to Duarte, a nonviolent felon. 101 F.4th at 691. Upon Defendant filing his motion, the Court held it in abeyance until the Ninth Circuit filed a mandate in *Duarte*.

After Miller filed his motion, the Ninth Circuit granted rehearing *en banc* in *Duarte*. 101 F.4th 657, *reh'g en banc granted, opinion vacated*, \_\_ F.4th \_\_, 2024 WL 3443151 (9th Cir. Jul. 17, 2024). The order granting rehearing *en banc* vacated the panel decision. *Duarte*, 2024 WL 3443151, at \* 1 (citing Fed. R. App. P. 35(a); 9th Cir. R. 35-3). As such, the panel's holding is void and no longer has legal effect. No mandate will be filed, and abeyance is no longer warranted.

Accordingly, IT IS HEREBY ORDERED that the abeyance be lifted. IT IS FURTHER ORDERED that the Government shall file a response brief within 14 days of this Order. Miller's reply is due within 7 days of the Government's response.

A trial date will be set by separate order.

DATED this 6<sup>th</sup> day of August, 2024.

  
SUSAN P. WATTERS  
United States District Judge